

APPEAL NO. 032260
FILED OCTOBER 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 30, 2003. The hearing officer determined that (1) the appellant (carrier) waived the right to dispute the claimed injury by not contesting the injury in accordance with Section 409.021; (2) the date of injury (DOI) is _____; (3) the respondent (claimant) sustained a compensable injury on _____, due to the carrier's waiver; (4) the claimant had disability from September 4 through September 9, 2002; and (5) the carrier is not relieved from liability under Section 409.002, because the claimant timely notified his employer of an injury pursuant to Section 409.001. The carrier appealed these determinations on legal and sufficiency of the evidence grounds. The file does not contain a response from the claimant.

DECISION

Affirmed.

WAIVER AND COMPENSABILITY

The hearing officer did not err in determining that the carrier waived its right to dispute the claimed injury by not contesting the injury in accordance with Section 409.021. The carrier essentially argues that benefits had not accrued within seven days of written notice and, consequently, it had no obligation to take any action within that time. We rejected this argument in Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, and decline to reconsider it in this case.

The carrier also argues that the submission of a "cert-21" violates Texas W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.2(j)(1) (Rule 124.2(j)(1)), which provides "Except as otherwise provided by this title, carriers shall not provide notices to the [Texas Workers' Compensation Commission (Commission)] that explain that benefits will be paid as they accrue." We note that the procedure for submitting a "cert-21" was established by Advisory 2002-15, dated September 12, 2002. Whether the Commission exceeded its authority in issuing Advisory 2002-15 is a matter for the courts and will not be addressed here. See Texas Workers' Compensation Commission Appeal No. 010160, decided March 8, 2001.

Finally, the carrier argues that it did not waive its rights under Section 409.021, because the claimant did not sustain an injury. The carrier cites Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.). In Williamson, the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has recognized that Williamson is limited to situations where there is

a determination that the claimant had no injury, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. In this case, the hearing officer determined and the evidence shows that the claimant did have an injury in the form of asthma. Because the carrier waived its right to contest the claimed asthma injury under Section 409.021, the hearing officer did not err in determining that the claimant's asthma was compensable.

DISABILITY, DOI, AND NOTICE

The hearing officer did not err in making the complained-of disability, DOI, and notice determinations. The carrier's challenge to these determinations is premised upon the success of its arguments with regard to waiver and compensability, above. Given our affirmance of the hearing officer's waiver and compensable injury determinations, we likewise affirm the disability, DOI, and notice determinations.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge